

New Jersey State Tax news

A Quarterly Newsletter

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Spring 1995



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Use Tax Billings

During calendar year 1994 the Division issued some 14,000 use tax bills to residents of this State.

The New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) requiring New Jersey vendors to collect sales tax became law in 1966. However, unless a vendor or any of its agents are physically doing business in New Jersey, they cannot be held liable for the collection and payment of the New Jersey Sales Tax.

Since the State cannot force the collection of sales tax by most nonresident vendors, it must rely on compensating use taxes to protect home state vendors from unfair competition and protect the tax base. Therefore, the New Jersey Sales and Use Tax Act also requires a purchaser residing in New Jersey to pay a use tax whenever he or she purchases taxable goods or services for use in New Jersey where the vendor does not legally collect the sales tax. Generally this occurs in mail order situations and in cases when the purchaser visits an out-of-state vendor to place an order that is subsequently mailed or shipped into New Jersey.

In order to minimize penalty and interest charges, individuals who incur a use tax liability are required to remit the tax within twenty (20) days of the date that they took possession of the item in New Jersey. The use tax remittance form (ST-18) may be obtained at any of our District Offices as well as by calling 609-588-2200. In

addition on page 18 of the New Jersey Gross Income Tax Packet you will find an ST-18 together with instructions.

Having recognized that many New Jersey residents were not aware of the existence of the use tax portion of the Sales and Use Tax Act, the Division initiated, in 1981, a use tax publicity campaign designed to reach every New Jersey resident filing the New Jersey Gross Income Tax return. A use tax remittance line appears on every New Jersey resident income tax return for tax years on and after 1981.

For the year 1994 use tax may be reflected on line 36 when filing the New Jersey Gross Income Tax return.

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important phone numbers

Tax Hotline 609-588-2200
Recorded Tax Topics .. 800-323-4400
Speaker Programs 609-984-4101
NJ TaxFax 609-588-4500

Alcoholic Bev. Tax 609-984-4121
Corporate Mergers, Withdrawals
& Dissolutions 609-292-5323
Corporate Tax Liens .. 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
609-292-5035
609-292-7147

Local Property Tax 609-292-7221
Motor Fuels Tax
Refunds 609-292-7018
Public Utility Tax 609-633-2576
Tax. Registration 609-292-1730

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Vendors who are registered to collect and remit New Jersey Sales Tax should continue to reflect use tax on line 5 of the ST-50. □

Alcoholic Beverage Project

The New Jersey Division of Taxation will, very shortly, begin conducting a comprehensive review of the New Jersey retail alcoholic beverages industry. The Division has requested the assistance and cooperation of all licensed wholesalers and distributors of alcoholic beverages in providing the Division with industry-wide retailer summary sales information.

It is the Division's intention to consolidate each retail licensee's purchase data from all alcoholic beverage suppliers and compare it to tax returns filed by the retailers. Appropriate action, including audits and investigations, will be initiated for retailers who do not appear to be in reasonable compliance with applicable State tax laws. □

Interest 11.5% for First Quarter

The interest rate assessed on amounts due for the first quarter of 1995 is 11.5%.

The assessed interest rate history is listed below.

| Effective Date | Interest Rate |
|----------------|---------------|
| 1/1/93 | 11% |
| 4/1/93 | 11% |
| 7/1/93 | 9% |
| 10/1/93 | 9% |
| 1/1/94 | 9% |
| 4/1/94 | 9% |
| 7/1/94 | 9% |
| 10/1/94 | 9% |
| 1/1/95 | 11.5% |

GROSS INCOME TAX S Corporation Fringe Benefits

Effective for tax year 1994, a Federal S corporation which has made the election to be treated as an S corporation for New Jersey purposes must include in New Jersey gross income the value of fringe benefits paid for 2% shareholders. Consequently, such amounts included in Federal gross income on the 1994 Form W-2 must also be included in New Jersey gross income. These reporting requirements apply to both calendar year and fiscal year corporations that were New Jersey S corporations for any part of 1994.

With respect to Federal S corporations that have not made the S election in New Jersey the treatment will be the same as in previous tax years. Such corporations should continue to exclude the value of fringe benefits paid for 2% shareholders from New Jersey gross income. □

Electronic Funds Transfer

Under P.L. 1992, c.140, beginning March 1, 1993, taxpayers with a prior year's liability of \$200,000.00 or more in any one tax are required to remit all their tax payments to the Division using Electronic Funds Transfer (EFT). The eligibility threshold was reduced to \$100,000.00 in March 1994. The eligibility threshold will be reduced to \$50,000.00 in 1995 and \$20,000.00 in 1996.

If a taxpayer meets the requirements for participation in the EFT Program, they will be notified by the Division. The taxpayer will be asked to complete a new Application for Registration (Form REG-1). This allows the

Division to update registration information and tax eligibilities. An Authorization Agreement for Electronic Funds Transfer (EFT-1) and associated worksheets must be completed within 30 days.

There are two methods that can be used when making electronic payments, the Automated Clearing House Credit (ACH Credit) and Automated Clearing House Debit (ACH Debit).

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New Jersey State Tax news

is published by the:

**New Jersey Division of Taxation
Technical Services
Taxpayer Services Branch
Office of Communication
CN 281
Trenton, NJ 08646-0281**

Division of Taxation Director:
Richard D. Gardiner

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ACH Debit Option

The ACH Debit method allows the transfer of funds by authorizing the State to electronically debit an authorized bank account. This process is initiated by a toll-free telephone call to a data collection service to provide the appropriate security and tax payment information. All ACH Debit costs are paid for by the State.

ACH Credit Option

The ACH Credit Option allows the taxpayer to transfer funds by notifying their bank to debit their account and credit the State's bank account. Using this method the bank must originate the transaction using the ACH CCD+/TXP format. As the taxpayer is the originator of the transaction, the taxpayer is responsible for any costs incurred using this method.

For the fiscal year ending June 30, 1994 the Division collected over \$3.6 billion and processed over 74,000 transactions through the EFT Program. For more information on the Electronic Funds Transfer Program call (609) 984-9830 or write to:

New Jersey Division of Taxation
EFT Unit
CN 191
Trenton, NJ 08646-0191

New Urban Enterprise Zones

The New Jersey Department of Commerce and Economic Development recently announced the following newly approved urban enterprise zones and corresponding effective dates.

| MUNICIPALITY | EFFECTIVE DATE |
|--------------|----------------|
| Passaic | Aug. 24, 1994 |
| Paterson | Sept. 2, 1994 |
| Asbury Park* | Sept. 21, 1994 |
| Perth Amboy | Oct. 29, 1994 |

Lakewood Twp. Nov. 1, 1994
Phillipsburg Nov. 1, 1994
Long Branch* Nov. 21, 1994

*Asbury Park and Long Branch hold a joint designation as one zone.

Four additional urban enterprise zones will be designated shortly.

Urban enterprise zones were previously established in:

Bridgeton (April 22, 1985),
Camden (Oct. 18, 1984),
Newark (Dec. 5, 1984),
Plainfield (June 17, 1985),
Trenton (April 24, 1985),
Millville/Vineland (April 3, 1986),
Elizabeth (Dec. 17, 1985),
Jersey City (Jan. 16, 1986),
Kearny (Jan. 12, 1986), and
Orange (Dec. 23, 1985).

Designations are effective for 20 years. In addition, the tax benefits become available only after the designation occurs and the particular business applies for and is certified by the Department of Commerce as a "qualified business." The certification must be renewed annually. Once the certification is issued, the business can purchase certain goods and services without paying any sales tax. If the entity is a corporation, it may also be entitled to credits for newly hired workers.

Retailers who wish to qualify for the reduced sales tax benefit must apply to the Division of Taxation to become eligible for the certification that allows them to charge 3% sales tax. This benefit applies to receipts from sales of certain tangible personal property. The 3% certification stays in force as long as the business continues to retain its status as a "qualified business."

The Division issues certifications and renewals to qualified businesses on a continuing basis. Although each zone

has its own local coordinator, the Division also responds to numerous inquiries relating to the tax benefits. □

CORPORATION TAX

S Corporation Built-in Gains

An inquiry was recently made concerning New Jersey's tax treatment of built-in gains for New Jersey S corporations. For New Jersey Corporation Business Tax purposes, a New Jersey S corporation will be required to report the same gross amount of built-in gains as reported on Schedule D for Federal tax purposes. These gains will be taxed at the full Corporation Business Tax rate of 9.00%.

In accordance with N.J.S.A. 54:10A-5 (c)(3), the 9% Corporation Business Tax rate will be applied to "any of its (a New Jersey S Corporation's) entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State..." Accordingly, the amount of income taxed on the Federal corporate return (after application of the business allocation factor) will be subject to the 9% Corporation Business Tax rate. □

Correction

Editor's note: There was an omission in an article in the last issue of the *State Tax News* (Winter 1994, Volume 23, Number 4) on page 5. In the article titled *Tax Assessor Certificates*, also listed under Essex County should have been **K. Sean Cooney, Verona Township**, who passed the exam held on September 24, 1995 and received a Tax Assessor Certificate. We apologize for this mistake. □



CORPORATION TAX **Manufacturing** **Credit for Leased** **Equipment**

A taxpayer recently inquired as to how the Manufacturing Equipment and Employment Investment Tax Credit would apply to a business that entered into a 5-year equipment lease contract on September 5, 1993. The following questions were raised:

1. Can the credit be prorated for the period in which the lease contract occurred subsequent to the effective date?
2. How would the renewal of the lease be treated?

In order to qualify for this credit, a taxpayer must invest in qualified manufacturing equipment in its tax year beginning *on or after* the effective date of January 1, 1994. Qualified equipment means machinery, apparatus or equipment acquired by purchase or lease for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing or refining, as defined in N.J.S.A. 54:32 B-8 13(a), having a useful life of four or more years, and *placed in service* in New Jersey.

For purposes of the credit, property is considered placed in service or use in New Jersey in the earlier of the following tax years:

1. The tax year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins, **or**
2. The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

Therefore, any purchase or lease contracts entered into prior to January 1, 1994 would not qualify since there are no provisions for prorating use subsequent to January 1, 1994.

In reference to the second question, lease renewals, subleases or assignments shall not be considered under "qualified equipment." □

GROSS INCOME TAX **Credit for NYC** **Unincorporated** **Business Tax**

The Division of Taxation has previously determined that tax paid to New York City as Unincorporated Business Tax (UBT) is not tax on an individual's income but is imposed on the unincorporated business income of every unincorporated business wholly or partly carried on in New York City and is deductible by the business or partnership. Thus, the UBT is not considered a tax on the individual taxpayer's income and the income and tax cannot be used to calculate a credit for taxes paid to other jurisdictions. (*New Jersey State Tax News* July/August 1990).

However, New Jersey resident taxpayers who are subject to New York City Unincorporated Business Tax are required to add back the UBT paid to Line 22, New York State Additions, in the Federal Amount Column of the New York State Non-Resident Income Tax Return.

The amount of UBT added back may be used in the numerator of the credit calculation for taxes paid to other jurisdictions (New York State) on the New Jersey Resident Income Tax Return. The addback is included with other New York State income reportable on Line 1, Schedule A of the New Jersey Return.

This New York Addition satisfies both of the necessary requirements: 1) it is consistent with New Jersey Tax law (N.J.S.A. 54A:5-1b requires that net profits from business be determined without a deduction for taxes based on income) and 2) it is attributable only to business income earned and actually taxed in New York.

If a deduction from New Jersey taxable income was taken for the Unincorporated Business Tax paid, the amount of deduction must be added back to New Jersey taxable income, which results in a revised New Jersey tax. □

INHERITANCE/ESTATE TAX **Frequently Asked** **Questions**

This is the third and final of three successive issues in which the Transfer Inheritance and Estate Tax Branch will respond to specific inquiries taken from a list of most frequently asked questions.

1. Is an inventory by a representative of the Division of Taxation of the contents of a decedent's safe deposit box required?

Required inventory of safe deposit boxes was suspended by the Division, effective November 1991. This was accomplished by a revision to the Administrative Code which will expire January 1, 1997. There is no reason to believe that this revision will not be readopted at that time.

2. Why is it necessary for a return to be filed when the entire estate passes to Class "C," Class "D," or Class "E" beneficiaries and no tax is owed?

When any portion of an estate passes to Class "C" or Class "D"

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beneficiaries, a return is required to establish that the cumulative total of all assets passing to such a beneficiary is less than the statutory exemption. In the case of a Class "E" beneficiary, a return is necessary to establish that the recipient does, in fact, qualify as a Class "E" beneficiary for New Jersey Transfer Inheritance Tax purposes.

3. Is an inheritance tax return required when the estate is passing to a trust for the benefit of Class "A" beneficiaries?

Yes, a return must be filed so that the Branch may determine whether or not there may be potential tax consequences, however remote, due to the possible ultimate disposition of contingent interests.

4. Are IRAs subject to inheritance tax?

Yes, IRAs are taxable as a transfer to take effect at death for New Jersey Inheritance Tax purposes. The tax treatment of IRAs for Federal income tax purposes may cause some confusion in this area, however, they must be reported for inheritance tax purposes.

5. Is an IRA subject to Inheritance Tax if Federal income taxes are paid on the account?

Yes, the determining factors regarding taxability for Inheritance Tax purposes are the decedent's date of death and the relationship of the beneficiary to the decedent.

6. Is a copy of the Federal estate tax return required to be submitted in those cases where no estate tax is due?

Yes, a copy of the Federal 706 is required by statute to be submitted

to the Branch within 30 days after it is filed with the Federal government. The statute also requires that a copy of all correspondence from the Federal government regarding acceptance of the return as filed or changes to be made must be filed with the Branch within 30 days of receipt.

7. Where can an ID number be obtained to open an estate bank account?

This is a Federal matter and further information in this regard may be obtained by calling 1-(800) 829-1040. □

Unclaimed Property

As defined in N.J.S.A. 46-30B, et seq. (enacted in 1989, updating 1947 law) unclaimed property is essentially identified as intangible personal property that, after a specific abandonment period, must be reported and paid over to the State. The State must return the property to the rightful owner upon presentation of a valid claim.

A "Holder" means a person, wherever organized or domiciled, who is:

1. In possession of property belonging to another;
2. A trustee; or
3. Indebted to another on an obligation.

Any person or entity who wishes additional information may write to:

State of New Jersey
Division of Taxation
Property Administration
CN 214
Trenton, NJ 08646-0214

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to New Jersey Tax Court.
- County budgets certified to County Tax Boards.
- Percentage level of taxable value of real property set by County Tax Board resolution.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks and Director, Taxation.

April 15-

- Forms SR-3A filed with Property Administration by County Tax Boards.

May 1-

- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with collector where taxpayer's illness prevented required March 1 filing.

May 15-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certifications of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

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tax assessors' calendar - from pg. 5

May 18-

- Table of Aggregates signed and transmitted to Taxation and Local Government Services Directors, State Auditor, municipal clerks and clerk of board of freeholders by County Tax Board.

May 27-

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 1-

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted a medical extension sent.
- Repayment of disallowed Property Tax Deductions previously granted required. Nonpayments become liens.

June 5-

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June-

- Assessors' report, description and valuation of railroad property not used for railroad purposes to Director, Taxation.

June 15-

- Total # and \$ amount summary of senior citizen, disabled, surviving spouse and veterans' property tax deductions allowed by each district certified by County Tax Board to Director, Taxation. □

Revenue Opportunities Suggested by Division Staff

Division of Taxation Director Richard D. Gardiner recently recognized the efforts of five Division employees. To identify areas of noncompliance, suggestions were sought from employees throughout the Division. Selected suggestions will be considered for possible program implementation by the newly organized Revenue Opportunities Branch.

Director Gardiner announced that the five best suggestions were proposed by the following Division employees: Anita Green, Taxpayer Service Representative; John Lombardo, Supervising Investigator; Cathy Petrino, Taxpayer Service Representative; James Pronchick, Investigator; and Peter Rapetti, Investigator. "We are proud of our employees' professionalism and expertise," said Director Gardiner. "These suggestion awards are an acknowledgement by senior management of our employees' involvement in our compliance effort." □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- Investigations to prevent the increase of fraudulent rebate checks recently identified multiple homestead rebate checks that were addressed to the same location. A total of 88 checks were identified for delivery to two post office boxes, a single family residence and an apartment. In each of these cases, the checks were intercepted prior to delivery.

- A prosecution report has been submitted for a liquor store and its president pursuant to an investigation revealing the filing of fraudulent sales tax returns wherein \$1.5 million in sales was not reported nor was \$98,092 of collected tax related to the unreported taxable sales remitted.
- An investigation of a restaurant and its president uncovered the filing of fraudulent sales tax returns and the failure to report \$642,384 in taxable sales. In addition, \$43,894 of collected tax associated with the unreported sales was not remitted. This case was forwarded for prosecution.
- Two taxpayers have violated their probation by failing to make monthly court restitution payments. In the first case, over \$115,000 in sales tax was collected but not remitted. Sales tax collected but not remitted in the second case was \$44,700. Since the restitution was a condition of the probation, a request to terminate the probation for both taxpayers has been submitted.
- Four more defendants have pled guilty to tax evasion charges in the undercover operation to identify motor fuel tax evasion labeled "Operation Red Daisy." In total, the defendants stole more than \$60 million in taxes and laundered \$66 million. This investigative effort was conducted jointly by the states of New Jersey and Pennsylvania, FBI, Criminal Investigation Division of the IRS and the U.S. Attorney's Office - Newark.
- George J. Fahoury of Fahoury Bros. Auto Body Shop pled guilty to keeping false and fraudulent

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criminal enforcement - from page 6

books and records with the intent to evade taxes. He was ordered to make restitution in the amount of \$5,000 for sales tax owed.

- Prosecution reports were forwarded to the prosecutor's office for two cases involving the filing of fraudulent New Jersey income tax returns. In each case, a refund was sought by the taxpayer to which he was not entitled. The total amount illegally claimed exceeded \$43,700.
- Charges were filed against three businesses for the sale of unstamped cigarettes. The taxpayers in two of these cases also failed to obtain motor fuels and cigarette retailer licenses for multiple years. In one situation, employees were being paid off the books. □

Enforcement Summary

Civil Collection Actions

Quarter Ending - Dec. 31, 1994

Following is a summary of enforcement actions for the quarter ending December 31, 1994.

Certificates of Debt

Field Investigators secured 667 Certificates of Debt in New Jersey Superior Court. These Certificates of Debt, which have the same force and effect as docketed judgments, totaled \$17.7 million.

Levies

As a result of executing against 430 non-compliant taxpayers, Field Investigations collected \$2.9 million.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection have been exhausted, sei-

zure of the business and personal assets will take place. Field investigators will close a business seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending December 31, 1994, 63 businesses were seized. Some businesses were able to re-open, others remain closed. A listing of seized businesses appears on pages 9, 10, 11 and 12.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. A public auction of the business assets will be conducted in about 30 days.

During the quarter ending Dec. 31, 1994, 9 auctions were held by the Division. A listing follows on page 12.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the responsible officers of the business. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax. □

Tax Briefs

Corporation Business Tax

S Corporation Estimated Tax — A New Jersey C corporation with a fiscal year ended 9-30-94 paid \$10,000 in tax for the year ended 9-30-94. It elects to be treated as a New Jersey S corporation for the year 10-1-94 to 9-30-95. The issue concerns the "safe haven" provision for estimated returns for the year ended 9-30-95.

N.J.S.A. 54:10A-15.4d(1) provides that no addition to the tax need be

paid if the total amount of the installment payments equals or exceeds: "An amount equal to the tax computed at the rates applicable to the current fiscal or calendar accounting year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding fiscal or calendar accounting year." (Current year's rates, prior year's facts.)

For a New Jersey S corporation whose taxable year begins on or after January 1, 1994 but before January 1, 1995, the tax rate for a New Jersey S corporation is 2.35%. Thus, using current year rates and prior year facts, the estimated tax applicable under the example considered would be \$261.11 to qualify for the safe haven. (Assuming income of \$11,111.11 in both fiscal years multiplied by the rates applicable in both years, 9% and 2.35% respectively.)

Gross Income Tax

Credit for Taxes Paid on Partnership Income

— The reciprocal agreement between New Jersey and the Commonwealth of Pennsylvania only applies to wage income. Consequently, a New Jersey resident who receives self-employment income or distributive share of partnership income from Pennsylvania sources is eligible to receive a credit for taxes paid to Pennsylvania. Additionally, a taxpayer is eligible for the credit, even if the other jurisdiction's taxes were paid through mandatory withholdings.

The credit for taxes paid which is authorized by N.J.S.A. 54A:4-1(a), is allowed only for the amount of income or wage tax **imposed** by another jurisdiction. The statute does not authorize a credit for taxes **withheld** during the taxable year. In other words, the credit is authorized only for the tax actually levied on the tax-

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payer and not for taxes withheld as an estimate of the taxpayer's liability. A taxpayer is, therefore, required to provide the Division with proof of the final tax liability paid to the other jurisdiction for which a credit is being claimed. On this basis, the Division cannot accept a copy of a W-2 or a Schedule K-1 which simply shows the amount of tax withheld and gives no indication of the taxpayer's final tax liability. The Division considers a copy of the final tax return filed in the other jurisdiction to be sufficient proof.

In cases where a partnership files composite return(s) in various jurisdictions on behalf of its nonresident partners, the partnership should provide its partners with a certification detailing each partner's final tax liability to the other jurisdictions. The Division will accept such a certification as verification of a credit claimed, instead of requiring the New Jersey resident partner to attach to Form NJ-1040 a copy of each composite return filed by the partnership. □

In Our Courts

Corporation Business Tax

Investment Company – International Thomson Business Information, Inc. v. Director, Division of Taxation, Tax Court - 07-14-11509-91 CB, decided January 23, 1995.

Plaintiff corporation appealed from denial of its application to be taxed more favorably as an "investment company" pursuant to N.J.S.A. 54:10A-5(d) and N.J.S.A. 54:10A-4(f).

Plaintiff reported that it derived at least 90% of its total income from cash or investment assets or both, and therefore satisfied the "asset test" for an investment company, as defined by

N.J.S.A. 10A:-4(f). However, the assets included in the requisite 90% may not be assets attributable to services or direct day-to-day management provided for affiliated corporations. N.J.A.C. 18:7-1.15(b)(4).

The court found that plaintiff was actively involved with its subsidiaries and that its principal income consisted of management fees paid by the subsidiaries. Therefore it held that plaintiff did not qualify as an investment company.

Gross Income Tax

Computation of credit for taxes paid to other jurisdiction – David R. Allen v. Director, Division of Taxation, Tax Court 004866-93, decided November 30, 1994.

Plaintiffs, New Jersey residents, had New York source income in 1990. Their dispute with the Director arose over the calculation of credit for taxes paid to New York pursuant to N.J.S.A. 54A:4-1(b). Specifically at issue was the calculation of the numerator of the fraction used in determining the maximum credit:

Income subject to tax by other jurisdiction
Entire New Jersey income

Taxpayers' entire New Jersey income consisted of wages, interest, dividends, capital gains, and other income. Their net capital gains for New Jersey purposes reflected the deduction of capital losses of \$21,237 from capital gains. Taxpayers' New York source income consisted of wages, capital gains, and other income. Their income subject to tax in New York reflected the deduction of a \$5,744 rental loss. However, their New York income was not reduced by the capital loss. The resulting income subject to New York tax was \$147,682. Because of the large capital loss, their entire New Jersey income was \$143,199.

While taxpayers agreed that, in order to avoid double taxation, the numerator of the fraction should reflect a deduction of the amount of capital loss not taxed by New Jersey, they argued that the numerator should not reflect further deduction for rental loss. The Director argued that the calculation of the numerator required deduction of both the capital loss that reduced entire New Jersey income and the rental loss that reduced income taxed in New York. This argument was based on N.J.A.C. 18:35-1.12(a) 4i, which provides: "Income subject to tax by the other jurisdiction means those categories of income which are taxed by another jurisdiction...and which are also subject to tax under the New Jersey Gross Income Tax Act."

While acknowledging that the Director's approach was consistent with the regulation, the Tax Court decided that plaintiffs should prevail. It viewed the facts as unique because (1) income subject to New Jersey tax was lower than income taxed by New York and (2) one deduction was allowed only by New Jersey and another only by New

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Index for 1994

Here is the index for the *New Jersey State Tax News*, Volume 23 (1994) and a list of tax legislation for 1994 for your use. As with the indexes last year, the index is in the center of the issue for easy removal. Once removed, the index can be stored wherever convenient and helpful for retrieval. □

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1994 TAX LAWS

| CH. | DATE | SYNOPSIS | TAX* | BILL |
|-----|----------|--|------|--------------------|
| 2 | March 7 | Decreases gross income tax rates 5% for taxable years 1994 and thereafter. | GIT | A-1 |
| 3 | March 7 | Discontinues Corporation Business Tax surtax as of 1/1/94. | CBT | A-3 |
| 8 | March 16 | Increases minimum income necessary to be subject to GIT. | GIT | A-2 (1R) |
| 28 | May 5 | Extends expiration date of certain taxes under "Local Tax Authorization Act." | MIS | S-346 (1R) |
| 50 | June 23 | Changes qualifications of surplus lines insurers that are insurance exchanges with syndicates that are S corporations. | CBT | A-519 |
| 61 | June 30 | Appropriates FY 1994 public utilities gross receipts and franchise taxes in excess of \$723,000,000 that are not identified under general law for State use to municipalities for local property tax relief. | LPT | S-1251 Sca (1R) |
| 64 | June 30 | Provides enhanced surcharge collection methods, to be used by DMV to collect debts. Unpaid debts will be deducted from income tax refunds and homestead rebates. | GIT | A-1845 |
| 69 | July 6 | Decreases gross income tax rates for taxable years 1995 and thereafter. | GIT | A-10 |
| 72 | July 14 | Revises statutes concerning collection and payment of real property tax bills and revises certain budget dates for State fiscal year municipalities. | LPT | A-1769 Acs |
| 98 | Aug. 11 | Authorizes counties to establish food distribution authorities. | LPT | S-930(1R) |
| 109 | Sept. 7 | Supplemental appropriation of \$700,000 in FY 1995 for in-lieu-of-tax payments to New Brunswick by Rutgers, The State University. | LPT | S-1286 |
| 117 | Oct. 12 | Revises partnership reporting requirements under gross income tax. | GIT | A-1524 |
| 139 | Nov. 1 | Provides for a checkoff for taxpayers to make voluntary contributions on GIT returns for the Vietnam Veterans' Memorial Fund for five additional years. | GIT | A-1585 |
| 182 | Dec. 20 | Revises procedures for registration of voters. (Requires Division of Taxation to include registration forms in gross income tax packets.) | GIT | A-2307(1R) |

*Legend for Tax Type Column

| | | |
|-----|---|---|
| ABT | = | Alcoholic Beverage Tax |
| ACC | = | Atlantic City Casino Control Commission |
| ALL | = | All Taxes Administered by the Division |
| CBT | = | Corporation Business Tax |
| FBT | = | Financial Business Tax |
| GIT | = | Gross Income Tax |
| LPT | = | Local Property Tax |
| MIS | = | Miscellaneous |
| S&U | = | Sales and Use Tax |

Division of Taxation Seizures (October - December 1994)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened:

| County | Name/Address | Seizure Date | Business Type | Status |
|---------------|---|---------------------|----------------------|---------------|
| Atlantic | Rosa's Southern Dining Atlantic City | 12-08-94 | Restaurant | Open |
| | Blue Diamond Diner Pomona | 12-09-94 | Diner | Open |
| Bergen | KVN Corp. Fairview | 09-12-94 | Bar & Restaurant | Open |
| | SE Jong, Inc. Palisades Park | 10-18-94 | Bar | Closed |
| | G & B Foods, Inc. Emerson | 11-04-94 | Bar | Closed |
| | Bridgeview Auto Leonias | 11-21-94 | Car Wash | Open |
| | Team Computing Fair Lawn | 12-09-94 | Computers | Closed |
| Burlington | Jatalco, Inc. Palmyra | 10-05-94 | Bar | Open |
| | Job Well Done, Inc. Marlton | 11-03-94 | Cleaning Service | Closed |
| | Bark Group, Inc. Marlton | 11-10-94 | Retail CDs & Tapes | Closed |
| Camden | IK Donuts Corp. Cherry Hill | 10-13-94 | Coffee Shop | Open |
| | Gibau Corp. Cherry Hill | 10-26-94 | Cash Registers | Closed |
| | Prause Beauty Supply Collingswood | 10-27-94 | Beauty Supply | Auction |
| Cape May | Le Bistro N. Wildwood | 09-14-94 | Bar | Auction |
| | Corson Brothers, Inc. Marmora | 11-03-94 | Retail Hardware | Closed |
| | Cape Abstract Co. Wildwood Crest | 11-17-94 | Title Company | Open |
| | Molly O'Toole Bev. Inc. No. Cape May | 12-14-94 | Bar | Open |
| Essex | Kerner, Bruce Belleville | 09-13-94 | Candy Sales | Open |

continued on page 10

taxation seizures - continued from page 9

| County | Name/Address | Seizure Date | Business Type | Status |
|------------|--|--------------|------------------|---------|
| Essex | Johnston Letter Co. Newark | 10-25-94 | Stationery | Open |
| | One Washington Square, Inc. Newark | 12-15-94 | Liquor Store | Closed |
| Gloucester | Sweeten Sport Center East Greenwich | 11-29-94 | Boats | Open |
| Hudson | Best for Less Autos, Inc. Jersey City | 09-07-94 | Used Car Sales | Open |
| | Grove Imports, Inc. Jersey City | 10-20-94 | Pizza | Closed |
| | Vincenzos Pizzeria, Inc. Jersey City | 10-20-94 | Restaurant | Open |
| | Castellyna, Inc. Harrison | 12-02-94 | Pizza Restaurant | Open |
| | Delux Service Corp. Jersey City | 12-06-94 | Appliance Repair | Open |
| Mercer | 1267 C J Inc. Trenton | 10-04-94 | Bar | Auction |
| | Hoaglands Landscaping Hamilton Township | 11-02-94 | Landscaping | Open |
| | Casa Lido Ltd. Trenton | 11-09-94 | Bar | Open |
| | Cipolloni, Robert Trenton | 11-16-94 | Auto Repair | Open |
| | Gabari, Inc. Hopewell | 11-23-94 | Bar | Closed |
| | Pilla, Donald Trenton | 11-30-94 | Bar | Closed |
| | Pilla, John J. & Donald Trenton | 11-30-94 | Bar | Closed |
| | Bottoms Up Cafe Trenton | 11-30-94 | Bar | Closed |
| Middlesex | Lacy Sayreville | 09-08-94 | Truck Repair | Open |
| | Jeff Cafiero North Brunswick | 09-15-94 | Photographer | Open |
| | Henry Solomon, Inc. Sayreville | 10-13-94 | Auto Repair | Open |
| | Sayreville Muffler Sayreville | 10-13-94 | Auto Repair | Open |

continued on page 11

taxation seizures - continued from page 10

| County | Name/Address | Seizure Date | Business Type | Status |
|-----------|--|--------------|------------------|--------|
| Middlesex | Raritan Bay Auto Body Cliffwood Beach | 10-18-94 | Auto Repair | Open |
| | Great Coastal Trucking, Inc. East Brunswick | 12-14-94 | Trucking | Open |
| Monmouth | D&D Enterprises Brielle | 09-20-94 | Restaurant | Open |
| | Anthony Valenti West Long Branch | 10-11-94 | Electrician | Open |
| | Campbell, Robert Sea Girt | 11-17-94 | Auto Repair | Open |
| Morris | Paylou Ltd. Rockaway | 09-15-94 | Bar | Closed |
| | Lan Dee, Inc. Montville | 11-17-94 | Bar & Restaurant | Closed |
| | RJ Lake Enterprise Madison | 12-02-94 | Restaurant | Closed |
| | Louise Donahue Boonton | 12-07-94 | Records | Closed |
| | Hoffman Appliance Morristown | 12-08-94 | Appliance Repair | Closed |
| Ocean | Karla's Pet Shop Jackson | 09-14-94 | Pet Store | Open |
| | Panda Inn Lakewood | 10-05-94 | Restaurant | Closed |
| | Auers, Inc. Brick | 10-25-94 | Food Store | Open |
| | Flowers With Class Toms River | 10-27-94 | Flower Shop | Open |
| Passaic | Hewitt House West Milford | 09-08-94 | Bar | Closed |
| | Joreg, Inc. Paterson | 09-29-94 | Bar | Open |
| | Jacob Rothwacks Passaic | 10-18-94 | Bar | Open |
| | Garcia, Ratiel Passaic | 11-03-94 | Car Radios | Open |
| Salem | Fumbles Tavern, Inc. Carneys Point | 11-15-94 | Bar | Open |
| Union | Kurnmueller Tool Co., Inc. Union | 10-18-94 | Tool Wholesaler | Open |

continued on page 12

taxation seizures - continued from page 11

| County | Name/Address | Seizure Date | Business Type | Status |
|---------------|---|---------------------|----------------------|---------------|
| Union | Heads-Up Corp. of NJ Elizabeth | 11-15-94 | Video Store | Open |
| | Catwell Enterprises, Inc. Plainfield | 12-08-94 | Catering | Open |
| Warren | La Cava, Inc. Phillipsburg | 10-06-94 | Restaurant | Auction |
| | Willin Corp. Washington | 11-28-94 | Print Shop | Closed |
| | Par A Mor Phillipsburg | 11-28-94 | Restaurant | Closed |

Division of Taxation Auctions (October - December 1994)

| County | Name/Address | Auction Date | Business Type |
|---------------|--|---------------------|----------------------|
| Camden | Lacasa Cafe, Inc. Clementon | 09-22-94 | Bar |
| | Prause Beauty Supply Collingswood | 12-07-94 | Beauty Supply |
| Cape May | Le Bistro North Wildwood | 12-05-94 | Bar |
| Mercer | Bi Page, Inc. Trenton | 09-22-94 | Bar |
| | 1267 C J Inc. Trenton | 12-08-94 | Bar |
| Middlesex | 1001 Auto Parts, Inc. Colonia | 10-06-94 | Auto Parts |
| Monmouth | 1001 Auto Parts Keyport | 10-03-94 | Auto Parts |
| Ocean | DSKR Enterprises, Inc. Forked River | 12-05-94 | Deli |
| Warren | La Cava, Inc. Phillipsburg | 11-01-94 | Restaurant |

in our courts - continued from page 8

York. It concluded that in light of the specific facts and the statutory goal of avoiding double taxation, the principles of categorization of income in the regulation should not apply in this case. Instead deductions used in calculating the numerator must be limited to the greater of the total amount of deductions in either state. Summary judgment was entered for taxpayers.

The Division of Taxation is appealing this decision.

Gross Income Tax

Operative Effect of Interest Waiver Provision, N.J.S.A. 54:49-11b – *George V. Richardson v. Director, Division of Taxation*, Tax Court - 005783 - 93, decided December 9, 1994.

Plaintiff and his wife incorrectly calculated the amount of credit for taxes paid to New York on their timely 1988 joint return. The Division first sent them a notice of adjustment in March 1992 charging them additional tax plus penalty and interest, but later

waived the penalty and reduced the interest calculation by two percentage points. In May 1993 plaintiff filed a complaint, arguing that because his error resulted from his reliance upon erroneous instructions in the 1988 return, he was entitled to a waiver of all of the penalty and interest.

At issue was the operative effect of N.J.S.A. 54:49-11b, which provides for the waiver of any penalty or interest resulting from a taxpayer's reasonable reliance upon erroneous written advice furnished by the Division of Taxation. Enacted as part of the Taxpayers' Bill of Rights, P.L.1992, c.175, the provision became effective January 1, 1993.

Because plaintiff's reliance upon the Division's allegedly erroneous 1988 instructions occurred in 1989, well before the effective date of the new law, and because the provision created a substantive right to a complete abatement of interest, the Tax Court concluded that applying the provision retroactively would change the expectations under which both taxpay-

ers and the Division operated in 1989. Finding that none of the exceptions to the presumptions against statutory retroactivity existed in this case, the court ruled that the usual rule of prospective operation applies. Judgment was entered affirming the Director's assessment of interest.

Local Property Tax

Correction of Errors Statute – *Hovbilt, Inc. v. Township of Howell*, Supreme Court A-9; on appeal from 263 N.J. Super. 567 (App. Div. 1993); decided December 22, 1994.

Plaintiff Hovbilt, Inc. owned a parcel of land used for farming. Each year from 1985 through 1990 its application to the township for farmland assessment was granted. The tax assessor lost plaintiff's timely application for the 1991 tax year, and assessed the land at full value.

Instead of appealing the assessment to the county board of taxation, plaintiff filed a complaint with the Tax Court alleging an error correctable

continued on page 14

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courts - continued from pg. 13

under the Correction of Errors Statute, N.J.S.A. 54:51A-7. Plaintiff sought to have the matter remanded to the local tax assessor to determine its entitlement to farmland assessment. The Correction of Errors Statute, which provides an exception to the standard appeal process, allows the Tax Court to correct typographical or transposition errors or mistakes in tax assessment.

The Supreme Court affirmed the judgment of the Appellate Division, which had affirmed the Tax Court's dismissal of the complaint. Because the correct assessment would require a determination as to whether the property met the criteria in the Farmland Assessment Act, it was not subject to

easy calculation based solely on the nature of the tax assessor's mistake, i.e., losing plaintiff's application. The Court therefore held that the assessor's mistake was not the kind that is correctable under the Correction of Errors Statute and that plaintiff was not entitled to relief under that exceptional procedure. □

In Our Legislature

Gross Income Tax

Voter Registration Revisions — P.L. 1994, c.182 (signed into law on December 20, 1994) makes numerous revisions to the voter registration laws. Among the revisions is the requirement to include voter registration forms in the gross income tax instruction booklets.

This law is effective immediately, but became operative on January 1, 1995.

Gross Income Tax

"New Jersey Breast Cancer Research Fund" Donation Checkoff — P.L. 1995, c.26 (signed into law on January 26, 1995) establishes the "New Jersey Breast Cancer Research Fund" and provides taxpayers with an opportunity to contribute to the Fund by designating a portion of their refund or by making a donation at the time of filing their New Jersey income tax returns.

This legislation is effective for tax years beginning on and after January 1, 1996. □

tax calendar

april

| | SUN. | MON. | TUE. | WED. | THU. | FRI. | SAT. |
|---|------|------|------|------|------|------|------|
| 1 | | | | | | | 1 |
| 9 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 5 | 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| | 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| | 30 | | | | | | |

April 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

April 17

- CBT-100** Corporation Business Tax—Annual return for accounting period ending December 31
CBT-150 Corporation Business Tax—Installment payment of estimated

continued

April 17 - continued

- NJ-500** tax for 4th, 6th, 9th or 12th month of current tax year
Gross Income Tax—Employer's semi-monthly and monthly returns
NJ-1040 Gross Income Tax—Resident return for calendar year filers
NJ-1040NR Gross Income Tax—Non-resident return for calendar year filers
NJ-1040ES Gross Income Tax—Declaration of Estimated Tax, Voucher 1 for calendar year filers
NJ-1041 Gross Income Tax—Fiduciary return for calendar year filers

April 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
MFT-10 Motor Fuels Tax—Monthly report by seller-user of special

continued

April 20 - continued

- SCC-5** fuels for sales and/or use in the previous month
ST-20 Spill Compensation and Control Tax—Monthly return
ST-50 New Jersey/New York Combined State Sales and Use Tax—Quarterly return
ST-250 Sales and Use Tax—Quarterly return
ST-350 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-450 Cape May County Tourism Sales Tax—Monthly return
TP-20 Sales and Use Tax—Salem County—Quarterly return
UZ-50 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

April 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

may

| | SUN. | MON. | TUE. | WED. | THU. | FRI. | SAT. |
|---|------|------|------|------|------|------|------|
| 1 | | 1 | 2 | 3 | 4 | 5 | 6 |
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| 9 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 5 | 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| | 28 | 29 | 30 | 31 | | | |

May 1

NJ-500 Gross Income Tax—Employer's semi-monthly return

May 10

CWIP-1 Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

May 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending January 31

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's semi-monthly and monthly returns

May 22

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

May 22 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return
ST-51 Sales and Use Tax—Monthly return
ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-451 Sales and Use Tax—Salem County—Monthly return
TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

May 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

May 31

NJ-500 Gross Income Tax—Employer's semi-monthly return

june

| | SUN. | MON. | TUE. | WED. | THU. | FRI. | SAT. |
|---|------|------|------|------|------|------|------|
| 1 | | | | | 1 | 2 | 3 |
| 9 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 9 | 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 5 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| | 25 | 26 | 27 | 28 | 29 | 30 | |

June 12

CWIP-1 Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

June 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending February 28
CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

continued

June 15 - continued

NJ-500 Gross Income Tax—Employer's semi-monthly and monthly returns

NJ-1040ES Gross Income Tax—Declaration of Estimated Tax, Voucher 2 for calendar year filers

June 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

continued

June 20 - continued

ST-51 Sales and Use Tax—Monthly return
ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-451 Sales and Use Tax—Salem County—Monthly return
TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

June 26

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

June 30

NJ-500 Gross Income Tax—Employer's semi-monthly return

from the director's desk

Casino Hotel Parking Charges

Is sales tax due on the \$2.00 Casino Parking Fee imposed in Atlantic City?

No, receipts from motor vehicle parking are not subject to sales tax in New Jersey. Therefore, the "Atlantic City Parking Fee" whether or not collected from parking patrons, is not a taxable receipt for tax purposes under the New Jersey Sales and Use Tax Act.

Pet Grooming & Training

Will sales tax be charged on the grooming of my dog? How about obedience training?

Dogs and other animals are considered tangible personal property under the law. As such, the sales of dogs, pet supplies (including food) and grooming of the dog are subject to sales tax. However, charges for obedience classes are exempt from the tax.

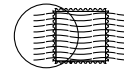
News Clipping Service

Are charges for a news clipping service subject to sales tax in New Jersey?

No, as parts of a research service, both the research fee and the separately stated "per clip" charge are exempt from sales tax. In this case, the "per clip" charge is an inconsequential element of the receipt if used only to ascertain the price charged for the research.

NJ Tax Question? Send your questions to:

From the Director's Desk
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NJ Division of Taxation
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